An Analysis and Evaluation of Certificate of Need Regulation in Maryland

Working Paper: Rehabilitation Hospital and Chronic Hospital Services

Analysis of Public Comments and Staff Recommendation

MARYLAND HEALTH CARE COMMISSION

Division of Health Resources

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Summary and Analysis of Public Comments and Staff Recommendations on An Analysis and Evaluation of Certificate of Need Regulation in Maryland
Working Paper: Rehabilitation Hospital and Chronic Hospital Services

I. Introduction

As required by House Bill 995 (1999), the Staff of the Maryland Health Care Commission (the "Commission") prepared the W*orking Paper: Rehabilitation Hospital and Chronic Hospital Services*, one in a series comprising a two-year study examining major policy issues of the Certificate of Need ("CON") process. This working paper provided the basis for public comment on whether changes are needed with respect to CON regulation of rehabilitation hospital and chronic hospital services in Maryland. The current CON program regulates the availability, accessibility, cost, and quality of these services.

The paper presents, in distinct sub-sections for rehabilitation hospital services and for chronic hospital services, several potential alternative regulatory strategies for addressing the above characteristics. The options are as follows:

Rehabilitation Hospitals

Option 1:	Maintain Existing Certificate of Need Review Program
Option 2:	Re-establish Need Thresholds for Rehabilitation Hospital Beds
Option 3:	Deregulate Rehabilitation Hospital Beds from Certificate of Need Review, with Approval by the Medicaid Program of Any New Rehabilitation Hospital Beds and Facilities Seeking Medicaid Reimbursement
Option 4:	Impose a Moratorium on New Rehabilitation Hospital Beds
Option 5:	Deregulation with Enhanced Licensure Standards With and Without Reporting Model to Encourage Quality of Care
Option 6:	Deregulation of Rehabilitation Hospital Beds from Certificate of Need Review

Chronic Hospitals

Option 1:	Maintain Existing Certificate of Need Review Program
Option 2:	Establish a Need Projection for Chronic Hospitals
Option 3:	Deregulation from Certificate of Need Review, with Approval by the Medicaid Program of Any New Chronic Hospital Beds and Facilities Seeking Medicaid Reimbursement
Option 4:	Impose a Moratorium on New Chronic Hospital Beds
Option 5:	Deregulation With Enhanced Licensure Standards with and Without Reporting Model to Encourage Quality of Care
Option 6:	Deregulation of Chronic Hospital Beds from Certificate of Need Review

The Commission released the working paper on May 17, 2001, and invited interested organizations and individuals to submit written comments on this paper through June 15, 2001. The Commission received comments from the following:

- Johns Hopkins Medicine
- LifeBridge Health
- Good Samaritan Hospital
- Dimensions Healthcare System
- MedStar Health
- The Association of Maryland Hospitals and Health Systems
- Deaton Specialty Hospital and Home
- James Lawrence Kernan Hospital

These public comments are summarized in Part II. Staff analysis of the public comments is provided in Part III. A staff recommendation is provided in Part IV.

II. Summary of Public Comments[1]

Johns Hopkins Medicine ("Hopkins") divided its comments into two categories that address inpatient rehabilitation hospital and chronic hospital services separately.

Regarding the oversight of inpatient rehabilitation hospital services, Hopkins supports a combination of the market entry management of Option 1: Maintain Existing Certificate of Need Review Program Regulation for Rehabilitation Hospital Beds together with the quality focus raised in Option 5: Deregulation with Enhanced Licensure Standards With and Without Reporting Model to Encourage Quality of Care.

According to Hopkins, this approach of combining options would "help to ensure that patients receive the highest level of rehabilitative care, and return to as high a level of function as possible." Hopkins believes that regulating the number of beds in a rehabilitation facility would limit capacity, but fails to address or monitor the quality of the rehabilitation program. Hopkins notes that although accreditation from CARF…the Rehabilitation Accreditation Commission ("CARF") does represent quality measures, having state specific quality measurements would facilitate the communication of information that would be valuable to all concerned in choosing a rehabilitation facility. However, Hopkins sees potential market issues if regulation of inpatient rehabilitation programs were to be based solely on quality measures.

One problem that Hopkins is concerned about would be the possibility of the simultaneous addition of new inpatient rehabilitation beds to the statewide rehabilitation bed complement. In Hopkins' view, this would result in the lowering of the average occupancy rates in inpatient rehabilitation facilities. Hopkins does not believe that market forces, by themselves, could be relied upon to efficiently limit the number of

[1] See the Attachment for a complete set of the written copies received on the Rehabilitation Hospital and Chronic Hospital Services Working Paper.

unnecessary, new inpatient rehabilitation beds. At the same time, Hopkins does not support the current CON regulation in which, what it terms, a broad market measure, such as occupancy in a geographic region, is the sole determinant. Rather, Hopkins supports some type of program specific review.

Hopkins is concerned that the current system that the Commission employs to determine if an applicant for beds to provide inpatient rehabilitation services meets the necessary threshold requirements for docketing and approval assumes that a patient can readily be transferred from one care site, such as an acute hospital, to a rehabilitation facility. It is Hopkins' belief that hospital-based facilities are better able to provide a smooth transfer, greater continuity of care, and have the resources to treat rehabilitation patients who are, by definition, medically complex. In a hospital-based unit, transfer of longer stay patients, i.e., transplant and cancer patients, is facilitated by its ability to accept patients with a higher acuity level, accommodating the preference of the patient's attending physician to refer the patient to an on-site rehabilitation unit. Hopkins further believes that a freestanding facility may be reluctant to accept a medically complex patient with probable needs for more medical attention, medical and surgical supplies, and a longer length of stay. A more expeditious transfer of the patient to a rehabilitation program would, in Hopkins' view, not only benefit the patient, but would also reduce the cost and average length of stay in an acute unit. Thus, Hopkins supports some type of facility-specific needs review.

Hopkins also finds that the current CON review program for inpatient rehabilitation services restricts new program development because of the general geographic occupancy measure currently in place.

Regarding the oversight of chronic hospitals, Hopkins supports Option 1, maintaining the existing Certificate of Need review program. Hopkins believes that Option 1 is the best means for maintaining control over the number of new beds for chronic hospitals, and ensuring that the need for chronic hospital services is met. Furthermore, Hopkins believes that the reviewing authority for the CON process should remain with the Commission. Hopkins views the health care planning function served by the Commission, including review of need and costs, as a uniquely different function from the current responsibilities and functions of the Office of Health Care Quality, and one that should remain with the Commission.

LifeBridge Health ("LifeBridge"), the corporate parent of, among other entities, Sinai Hospital of Baltimore ("Sinai") and Levindale Hebrew Geriatric Center and Hospital. Sinai is licensed for 57 acute rehabilitation beds. Levindale is licensed for 80 beds in the special hospital-chronic category (of which 20 are designated for geropsychiatric care) and 20 beds in the special hospital-rehabilitation category. LifeBridge supports Option 1, maintaining the existing regulatory structure for both acute rehabilitation services and chronic hospital services. LifeBridge believes that the present system has promoted the development of high-quality, financially stable facilities and programs. It is LifeBridge's view that although the number of chronic facilities – and, to a lesser extent, rehabilitation facilities – is limited, it believes that they offer the residents

of Maryland an appropriate level of access to these elements of the health care continuum.

Good Samaritan Hospital ("Good Samaritan"), a member of MedStar Health, wrote in support of both Option 1: Maintain Existing Certificate of Need Review Program Regulation for Rehabilitation Hospital Beds and Option 2: Re-establish Need Thresholds for Rehabilitation Hospital Beds. Good Samaritan believes that individuals recovering from strokes, amputations, orthopedic surgery, neurological diseases and brain and spinal cord injuries require highly specialized acute rehabilitation services, coordinated and delivered by interdisciplinary treatment teams composed of competent rehabilitation professionals. For this reason, Good Samaritan believes that the Certificate of Need program should be retained to ensure that there are quality rehabilitation programs that are appropriately staffed and strategically located to meet the needs of Maryland's citizens.

Moreover, Good Samaritan believes that, as the average length of stay for rehabilitation hospitals has been decreasing, impacting the average daily census of providers, this further supports the need to continue the Certificate of Need program for rehabilitation hospitals.

Dimensions Healthcare System ("Dimensions"), which provides rehabilitation services through Laurel Regional Hospital and chronic hospital services through Gladys Spellman Specialty Hospital and Nursing Center, supports Option 1: Maintaining the Existing Certificate of Need Review Program for both Rehabilitation Hospital and Chronic Hospital Services. Dimensions believes that "the existing Certificate of Ned process has resulted in the orderly development of necessary health services in Maryland," while at the same time precluding unnecessary duplication of services, thereby containing health care costs.

MedStar Health ("MedStar"), writing on behalf of its affiliated organizations which include, among others, Franklin Square Hospital Center, Good Samaritan Hospital, Harbor Hospital, and Union Memorial Hospital in Maryland and Georgetown University Hospital, National Rehabilitation Hospital, and Washington Hospital Center located in the District of Columbia, supports Options 1, which maintain the existing Certificate of Need oversight for rehabilitation hospital services, or Option 2, the Re-establishment of Need Thresholds for Rehabilitation Hospital Beds. MedStar prefers Option 2 because "it re-establishes the need thresholds for rehabilitation hospital beds in a manner that is consistent with the State [of Maryland's] regulation of other specialized services." It is MedStar's view that acute rehabilitation services are highly specialized medical services that require specialized coordinated interdisciplinary teams, especially for brain and spinal cord injuries, neurological and cardiac conditions. Consistent with its position on other specialized services, MedStar believes that Certificate of Need regulation through its articulated standard and review criteria, plus re-established need assessments, and public process provides the best oversight. Furthermore, MedStar believes that the low occupancy levels of the existing rehabilitation programs provide additional evidence that

those wishing to offer additional programs should be subject to a Certificate of Need review-type process.

Moreover, MedStar believes that another compelling reason for the State of Maryland to control the growth of rehabilitation services is the fact that Maryland's acute care hospital units and those rehabilitation beds operated by Levindale Hebrew Geriatric Center and Hospital and Deaton Specialty Hospital and Home are included in the Medicare Waiver test. If Maryland's Health Services Cost Review Commission is going to continue to regulate costs, MedStar believes that Maryland should not consider deregulating need.

The Association of Maryland Hospitals and Health Systems ("MHA") wrote in support of Option 1, maintaining the existing CON program for both inpatient rehabilitation hospital and chronic hospital services. MHA believes that "both of these services have undergone considerable regulatory and marketplace change in the last decade but, at present, appear to be stable." Further, MHA finds that "resource levels, in terms of providers and number of beds, appear to be sufficient, but not excessive, to meet the needs of Maryland's population."[2]

Deaton Specialty Hospital and Home ("Deaton") and James Lawrence Kernan Hospital ("Kernan") support Option 1, the continuation of the present CON review program, for both inpatient rehabilitation and chronic hospital services.

III. Staff Analysis of Public Comments

Rehabilitation Hospitals

A. Option 1: Maintain Existing Certificate of Need Regulation for Rehabilitation Hospital Beds

Johns Hopkins Medicine partly supports maintaining the existing Certificate of Need program. Hopkins views the market entry management role played by Option 1, as important, but believes it is questionable as to whether or not the present system can efficiently manage the introduction of any new rehabilitation beds into the market. Hopkins suggests "some type of program-specific review."

[2] Commission Staff notes that, in addition to beds discussed in the working paper, some facilities in Maryland provide chronic and rehabilitation care to the pediatric population. These facilities are Kennedy Krieger Institute and Mt. Washington Pediatric Hospital. According to its latest license, issued on May 30, 1998 by the Office of Health Care Quality, Kennedy Krieger Institute is licensed for a total of 70 special hospital beds, of which 39 are special hospital-pediatric and 31are special hospital-rehabilitation. Mt. Washington Pediatric Hospital is licensed for a total of 56 special hospital-pediatric beds, 41 of which are located at its West Rogers Avenue location. Following the September 30, 1996 approval of a Certificate of Need by the Commission's predecessor (Docket No. 96-24-1966), the remaining 15 other special hospital-pediatric beds licensed to Mt. Washington Pediatric Hospital have been housed at Prince George's Hospital Center to serve patients in Prince George's County and the surrounding areas.

LifeBridge Health also supports maintaining the existing regulatory structure for inpatient rehabilitation services as a means of "promoting the development of high-quality, financially stable facilities and programs." However, LifeBridge expressed its concern that possible future requests by one of its entities for inpatient rehabilitation beds may be hampered due to existing regulatory requirements for expansion of rehabilitation bed capacity which are based on minimum occupancy levels for every acute inpatient rehabilitation hospital and unit in the regional service area. LifeBridge believes that a rehabilitation facility with a high occupancy rate should be able to expand its capacity "without regard to occupancy rates at other institutions in the region."[3]

Good Samaritan Hospital, a member of MedStar Health, also submitted a "split-decision" with support for two options. It supports Option 1, in that it found that "the Certificate of Need process is valuable, and should remain in force." It's support for Option 2 is discussed below.

Dimensions Healthcare System also supports continued CON for inpatient rehabilitation services.

MedStar Health has given equivocal support to Option 1, which maintains existing Certificate of Need oversight for rehabilitation hospital services. This is in line with MedStar's November 1999 position statement supporting the CON model of regulation, especially for specialized health services, as MedStar believes that the CON program protects the consumer's access to quality, financially viable providers. MedStar's preference for Option 2 is discussed below.

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[3] Regarding Certificate of Need Docketing Rules, under the current State Health Plan for Acute Inpatient Rehabilitation Services, the Commission will docket a Certificate of Need application for new or expanded services only if all CON-approved and CON-exempt rehabilitation beds in the regional service area are available for use and every acute inpatient rehabilitation hospital and unit in the regional service area has maintained, on average, an occupancy rate equal to or greater than the following appropriate minimum occupancy for the most recent 12-month period shown in the Commission's data on rehabilitation occupancy rates to be released annually in November.

Licensed Capacity of Regional Service Area	Minimum Occupancy
0-49 beds	80 percent
50-99 beds	85 percent
$\geq$ 100 beds	90 percent

With regard to the Certificate of Need Approval Rule for expansion, under the current State Health Plan for Acute Inpatient Rehabilitation Services, the Commission will approve an acute inpatient rehabilitation hospital or unit for expansion only if all its beds are available for use and it has been operating at, on average, an occupancy rate equal to or greater than the following appropriate minimum occupancy for the most recent 12-month period in the Commission's data on rehabilitation occupancy rates to be released annually in November.

Licensed Capacity of Regional Service Area	Minimum Occupancy
0-49 beds	80 percent
50-99 beds	85 percent
$\geq$ 100 beds	90 percent

Likewise, **The Association of Maryland Hospitals**, supports Option 1. The MHA believes that, with present resource levels, maintaining the current regulatory environment is appropriate at this point in time.

Both the **James Lawrence Kernan Hospital** and **Deaton Specialty Hospital and Home** also support Option 1 for inpatient rehabilitation hospital services.

B. Option2: Re-establish Need Thresholds for Rehabilitation Hospital Beds

Good Samaritan Hospital commented that, while many rehabilitation providers are maintaining or growing the number of admissions, the average length of stay in acute rehabilitation beds is declining. This is reflected in the occupancy rate of the rehabilitation programs listed in the working paper, with 12 out of 16 programs for 1999 having occupancies below 70 percent. Based on this information, Good Samaritan Hospital believes that the Commission should re-establish need thresholds for rehabilitation hospital beds.

MedStar Health prefers Option 2 "because it re-establishes the need thresholds for rehabilitation hospital beds in a manner that [it finds to be] consistent with the State [of Maryland's] regulation of other specialized services."

Regarding need, the first State Health Plan, adopted in 1987, included a need-based methodology that used discharge abstract data from Maryland acute general hospitals and national rehabilitation hospitals and units to estimate the number of beds needed by potential rehabilitation admissions. CON approvals or exemptions subsequently granted by the Commission's predecessor, the Maryland Health Resources Planning Commission, resulted in the availability of rehabilitation beds in every region of Maryland. The Commission now views current utilization of inpatient rehabilitation facilities as a more accurate measure of need. Any method of assessing the future need for facilities in Maryland should consider the utilization of existing facilities, including specialized programs in contiguous areas that are accessible to, and used by, Maryland residents, and for which data are available.

To improve the quality and use of data reported by rehabilitation facilities in Maryland, the Commission recently established a work group that includes representatives of the Office of Health Care Quality, Health Services Cost Review Commission, and licensed special rehabilitation hospitals and units in Maryland. The Commission Staff believes that, before any further development of policies related to need or quality takes place, the data on which such policies are based should provide valid and reliable information.

C. Option 3: Deregulate Rehabilitation Hospital Beds from Certificate of Need Review, with Approval by the Medicaid Program of Any New Rehabilitation Hospital Beds and Facilities Seeking Medicaid Reimbursement

No commenter supported this option.

D. Option 4: Impose a Moratorium on New Rehabilitation Hospital Beds

No commenter supported this option.

E. Option 5: Deregulation with Enhanced Licensure Standards With and Without Reporting Model to Encourage Quality of Care

Coupled with support for Option 1, **Johns Hopkins Medicine** also endorses Option 5. This is due to Hopkins' belief that the regulation of inpatient rehabilitation programs "should be centered on the quality of the program," rather than solely on the quantity of rehabilitation beds. Under Option 5, Deregulation with Enhanced Licensure Standards With and Without Reporting Model to Encourage Quality of Care, the role of government oversight would shift from regulating market entry and exit to monitoring the on-going performance of the service through licensure standards either alone or in conjunction with a mandatory reporting model. It is the support of Option 5 that enhances the role of government to provide information in order to promote quality health services.

MedStar opposed this option because it believes that Option 5, like Options 3 and 4 above, would merely "shift oversight regarding the determination of need [from the Commission] to another agency with a narrower focus and less comprehensive charge than the Commission has through its CON authority."

With regard to the issue of quality, in 1986, Maryland enacted landmark legislation requiring CARF accreditation as a condition of licensure for rehabilitation facilities. A task force appointed by the Commission's predecessor made the original recommendation for the new licensure classification of special rehabilitation hospital. The Commission continues to regard national accreditation as an important tool in promoting the quality of inpatient rehabilitation services in Maryland. By law, the Commission may not duplicate standards or requirements related to quality that have been adopted and enforced by national accrediting authorities.

CARF has initiated a project to develop a limited set of quantifiable performance indicators for rehabilitation programs. The organization intends to incorporate the use of key indicators in setting standards and accrediting rehabilitation programs. The Commission will monitor this initiative.

F. Option 6: Deregulation of Rehabilitation Hospital Beds from Certificate of Need Review

No commenter supported this option.

Chronic Hospitals

A. Option 1: Maintain Existing Certificate of Need Review Program

Johns Hopkins Medicine supports Option 1, maintaining the Commission's existing CON review program for chronic hospital services. Furthermore, Hopkins believes that the Commission's current regulatory structure for determining if an applicant for chronic hospital beds meets the necessary threshold requirements for docketing and approval "provide[s] appropriate response to the needs of the community."

Likewise, **LifeBridge Health** and **Dimensions Healthcare System** support Option 1 for chronic hospital services. Their comments indicate their belief that maintaining CON oversight of this sector of health care helps ensure the viability and strength of existing providers.[4]

The **James Lawrence Kernan Hospital, Deaton Specialty Hospital and Home,** and **The Association of Maryland Hospitals and Health Systems,** also support Option 1 for chronic hospital services.

B. Option 2: Establish a Need projection for Chronic Hospitals

No commenter supported this option.

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[4] Under the current State Health Plan for Long Term Care Services (COMAR 10.24.08.05.H), the Commission will use rules in this section as threshold requirements for approval of an application for special hospital-chronic beds:

(1) Occupancy.
  (a) The Commission will approve a Certificate of Need application for new or expanded services only if every chronic hospital in the jurisdiction has maintained, on average, an 85 percent occupancy or better for at least the latest 12-month period as shown in the Health Services Cost Review Commission Current Rates Report for the latest fiscal year.

  (b) The applicant may show evidence as to why this rule should not apply to the applicant.

(2) Expansion. The Commission will approve a chronic hospital for expansion only if all its beds are available for use and it has been operating at least at 85 percent average occupancy for a period of at least the most recent consecutive 24 months, as shown in the Health Services Cost Review Commission Current Rates Report for the latest fiscal year.

C. Option 3: Deregulation from Certificate of Need Review, with Approval by the Medicaid Program of Any New Chronic Hospital Beds and Facilities Seeking Medicaid Reimbursement

No commenter supported this option**. Johns Hopkins Medicine** believes that "the reviewing authority for the Certificate of Need process should remain with" the Commission, which retains expertise in the health planning function, including review of need and costs.

D. Option 4: Impose a Moratorium on New Chronic Hospital Beds

No commenter supported this option.

E. Option 5: Deregulation With Enhanced Licensure Standards With and Without Reporting Model to Encourage Quality of Care

No commenter supported this option.

F. Option 6: Deregulation of Chronic Hospital Beds from Certificate of Need Review

No commenter supported this option.

The following table summarizes the public comments received on the regulatory options presented in Commission Staff's working paper on acute inpatient rehabilitation services and chronic hospital services. An (S) indicates support.

	Rehabilitation						**Chronic**					
Options→	**1**	**2**	**3**	**4**	**5**	**6**	**1**	**2**	**3**	**4**	**5**	**6**
Hopkins	S[5]						S					
LifeBridge	S						S					
Good Samaritan	S	S										
Dimensions	S						S					
MedStar		S										
MHA	S						S					
Deaton	S						S					
Kernan	S						S					

[5] Johns Hopkins Medicine supports maintaining CON with a loosening of occupancy thresholds, a strengthening of quality, and "some type of program-specific review."

IV. Staff Recommendation

Commission Staff recommends that the Maryland Health Care Commission adopt Option 1, Maintain Existing Certificate of Need Review Program for both Acute Inpatient Rehabilitation Services and Chronic Hospital Services, as the Commission's recommendations to the General Assembly regarding the Certificate of Need requirement for new or expanded services in these health care sectors. Of the eight entities submitting comments on the working paper, representing a cross section of Maryland's providers of acute inpatient rehabilitation services, chronic hospital services, as well as the statewide industry association, a strong consensus exists that it would be preferable to continue oversight of market entry through the CON program. Staff would also support the recommendation that the Commission needs to strengthen its data collection regarding rehabilitation and chronic hospital services and so that it can look further at need and quality issues. In the context of changes in the reimbursement arena for both these types of services, having relevant, reliable data will have an impact on how the Commission wants to plan for any expansion in these service areas.

ATTACHMENT